

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 31 of 1995

with

MISC.CRIMINAL APPLICATION NO. 1439 OF 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ALAMKHAN M PATHAN

Versus

STATE OF GUJARAT

Appearance:

MR BA SURTI for Petitioner

MR NIGAM SHUKLA, ADDL.PUBLIC PROSECUTOR for Respondent

No. 1

CORAM : MR.JUSTICE S.D.DAVE

Date of decision: 01/05/96

ORAL JUDGEMENT

The present Criminal Revision Application, in the facts and circumstances of the case, requires a recognition.

The present petitioner Alamkhan Pathan has submitted an application before the learned Special Judge, for his discharge, because he stood charged for

the alleged commission of the offences punishable under Sections 22 and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ('NDPS Act, 1985' for short). His case for the discharge was that, there was absolutely no material against him on which the charge could be framed. This application came to be submitted on December 15, 1994. The learned Additional Public Prosecutor, in charge of the matter had studied the papers and had endorsed no objection on this application. Therefore, it appears very clearly that the learned Additional Public Prosecutor was of the opinion that there was no material on the basis of which the charge for the alleged commission of the above said offences could have been framed against the petitioner-accused. Anyhow, the learned City Sessions Judge, Ahmedabad was of the opinion that the endorsement was not clear and that the question could be considered at a later juncture. This view of the learned City Sessions Judge has resulted in the rejection of the application for discharge. These orders dated 28th December 1994 have been brought in challenge in the present Criminal Revision Application, before me.

Learned Counsel Mr. Bharat Surti, who appears on behalf of the petitioner, raises a two-fold contention. According to the learned Counsel, the learned Public Prosecutor in charge of the matter, had made a clear endorsement saying that, she had no objection if the application for discharge were to be granted. Mr. Surti therefore, urges that, when the learned Public Prosecutor, upon a careful consideration of the police papers had endorsed no objection, the said say should have been weighed very heavily before the learned City Sessions Judge. The second contention coming from the learned Counsel is that, even if the statements of the co-accused are read, which in fact, cannot be read, then also, nothing incriminating could have been found against the present petitioner on the basis of which the charge for the alleged commission of the above said offences could have been framed.

It appears that, Mr. Surti is correct in raising the above said two contentions before me. The application for discharge came to be submitted by none else, but Alamkhan Pathan, the present petitioner. There was no other application for discharge submitted by any other accused. Therefore, the no objection endorsed by the learned Additional Public Prosecutor must have been taken as relating to this very application. It, therefore, would mean that, upon the perusal of the police papers, the learned Additional Public Prosecutor was of the opinion that the petitioner deserved a

discharge because there was no material on which the charge against him could have been framed.

The learned Sessions Judge has considered the police material which was made available to him. This material would go to show that, one Mr. Raval who was working as PI in the Terrorist Squad, Gujarat State, Ahmedabad, had raided the premises situated at Patrakar Colony, near Vijaynagar Cross Roads, Ahmedabad and certain Charas came to be recovered from the custody and possession of one Premkumar. One another accused Rajiv was also found to be present in the premises. On the interrogation of these two persons, who were found to be in custody of Charas, it was revealed from them and especially from Premkumar that they had purchased or obtained the quantity of Charas from two other persons, namely, Girdhar Sharma and Hukam Chudram, the residents of Himachal Pradesh. These persons were also interrogated and it was sought to be suggested that, in past, certain quantity was sold to the petitioner Alamkhan. Excepting this say of the co-accused, there was nothing before the learned Sessions Judge to frame a charge against the present petitioner. It, therefore, appears that the learned City Sessions Judge was not justified in rejecting the discharge application submitted by the petitioner.

The present Criminal Revision Application, therefore, requires to be allowed and the same is hereby accordingly allowed. The orders under challenge are hereby quashed and set aside. The application submitted by the petitioner for his discharge is recognised. He shall accordingly stand discharged from the prosecution which is for the alleged commission of the offences punishable under NDPS Act, 1985. Rule is made absolute accordingly.

In view of my orders in the main Criminal Revision Application, the present Miscellaneous Criminal Application requires to be disposed of. It is hereby accordingly disposed of. Notice shall stand discharged.
